



IN THE HIGH COURT OF JUDICATURE AT BILASPUR (C.G.)

W.P.NO. 579 OF 2001

BETWEEN

1. Mayank Mishra S/o Shri G.S.Mishra, aged about 18 years, R/o 91 College Road, Choubey Colony Raipur.
2. Abhishek Agrawal S/o S.N.Agrawal, aged about 18 years, R/o 328, Samta Colony, Agrasen Re Rollers (P) Ltd, Main Road, Raipur.
3. Rohit Agrawal S/o P.K.Agrawal, aged about 18 years r/o 6 Shala Marg Choubey Colony, Raipur.

PETITIONERS

AND

1. The Chief Executive and Secretary,
Council for the Indian School Certificate
Examination, New Delhi.
2. The Principal,
Raj Kumar College, Raipur.

RESPONDENTS

WRIT PETITION UNDER ARTICLES 226/227 OF CONSTITUTION
OF INDIA

P.R. No. 69/07
Registered by Shri A. P. Singh
Date 17.11.07

AIR

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HIGH COURT OF CHHATTISGARH, BILASPUR

SINGLE BENCH: Mr. W.A. SHISHAK, HON'BLE THE C.J.

WRIT PETITION NO.579/2001

Mayank Mishra & Others

Vs

The Chief Executive & Secretary, Council
for the Indian School Certificate Examina-
tion, New Delhi & another.

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Mr. Awadh Tripathi, learned counsel for petitioners.

Mr. Prashant Mishra, learned counsel for respondents.

Mr. Manindra Shrivastava, learned counsel for
Intervenors (22 students).

Mr. P. Diwakar, learned counsel for Intervenors
(5 students) and

Mr. Ashok Trivedhi, learned counsel for Intervenors
(12 students).

ORAL ORDER

(Passed on 25/4/2001)

The matter concerns re-examination of Indian School
Certificate Examination for the year 2001 in respect of
some subjects and particularly in respect of Rajkumar
College at Raipur.

2) While issuing notices on 18/4/2001, this Court
had passed the following interim order:

"Until further orders the examination
scheduled to be held from April 19th
to 27th shall not be held and the time
table prepared in this regard shall
remain suspended and shall not be acted
upon. The respondents, however, are
given liberty to approach this Court
for modification, variation or vacation
of this interim order, if so advised".

3) Returns have been filed. Learned counsel
representing the parties have been heard finally.
In view of the urgency of the matter, I propose
to dispose of the matter in the open Court now.

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4) Indian School Certificate Examinations were scheduled from 1st March to 3rd April. Examinations were concluded. Thereafter, in respect of Raj Kumar College, Raipur - respondent no.2, re-examination of the same examination in respect of some subjects came to be issued by the Council for the Indian School Certificate Examinations. There are three writ petitioners.

5) Mr. Awadh Tripathi, learned counsel for the petitioners submits that if the allegation of leakage of certain question papers is found to be true and if it became necessary that re-examination should be ordered, it should have been done in respect of all the papers and also in respect of all the centres through out the country. Learned counsel for the petitioner further submits that whereas the defect was said to have been detected on 5th March 2001, the entire examination was allowed to be concluded upto the last date i.e., upto 3rd April 2001. It is the submission of the learned counsel for the petitioner that ^{on} detection of some defect/leakage in any or some of the question papers, the examinations could have been stopped from 5th March itself. Another submission of Mr. Tripathi, learned counsel for the petitioner, is that as far as question papers of Accounts subject^s are concerned, new sets of question papers were brought from Delhi and the earlier question papers were completely replaced and examinations were held in respect of Accounts papers. The submission of the learned counsel for the petitioner is that if such was possible in respect of Accounts papers why the same yard-stick should not have been applied to other papers. It has also been

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further submitted by learned counsel for the petitioner that since the petitioners have already ~~xxx~~ done their best, it is now ~~not~~ possible for them to concentrate to write the same examinations in respect of some papers. According to Mr. Tripathi, the entire exercise of cancellation of the aforesaid examination in respect of some papers is uncalled for and it is in fact arbitrary.

5) Mr. Manindra Shrivastava, learned counsel for Interveners supporting the case of the writ petitioners submits that though the examinations as such can be held under certain circumstances inasmuch as such power is vested in the Council, according to him, there are no sufficient materials justifying cancellation of examination in respect of some papers and ordering fresh examinations in respect of those papers. Mr. Manindra Shrivastava further submits that in fact no proper inquiry as such has been conducted by the Competent Authority. It is submitted that there is no conclusive finding by the Competent Authority to the effect that leakage took place in respect of some question papers while in custody of respondent no.2. According to Mr. Shrivastava, learned counsel for the Interveners it cannot be clearly ascertained as to who really conducted the inquiry and what specific finding has been recorded by such Enquiry Committee. According to Mr. Shrivastava, if enquiry report as such has been produced before this Court, the same could have been perused for the satisfaction of this Court, but such is not possible inasmuch no report has been placed before the Court. It is ^{the} further submission of Mr. Shrivastava that since something abnormal was said

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to have been detected as early as on 5th March 2001, a full enquiry could have been made even before the completion of the examinations which came to an end on 3rd April 2001. Learned counsel has straneously submitted that there is no ~~any~~ finding that there was leakage in respect of some of the question papers. At this stage, however, I may also hasten to say to the credit of Mr. Shrivastava that in all fairness learned counsel, however, is of the view that everything was not well in the entire situation.

6) Mr. P. Diwakar while representing five students as Intervener submits that when something abnormal is detected, the Competent Authority i.e., the Council has to take action deemed fit by it inasmuch as such power is clearly vested with the respondent no.1 - Council.

7) At this stage, I can understand that all the learned counsel representing the parties are very much disturbed inasmuch as the interest and the future of the students of this College particularly XIIth Class ~~examinees~~ are likely to be affected adversely if the matter is not decided right away. Mr. Diwakar has produced a time table of various important competitive examinations to be conducted by various Authorities in which the students/examinees would like to appear. Time-table of various examinations are stated to have been made commencing from 6th May 2001 to 23/6/2001. In this regard Mr. Diwakar submits that the students may be allowed to take their re-examinations immediately so that they will also be able to appear in all other important examinations as stated above. Mr. Diwakar

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further submits that if re-examinations are to be held, the petitioners cannot take grievance that in such event they shall suffer irreparable loss inasmuch as like all other students they would have a right to write the same examination. At this stage, another fact may be recorded. The re-examination sought to be made is in respect of all other subjects except English Papers 1 & 2, Physics Paper 2 (Practical) and Accounts papers.

8) Mr. Ashok Trivedi appearing on behalf of 12 students (interveners) submits that there is no necessity of re-examination of the practical side in respect of all other subjects as the same has been done in respect of Physics Paper 2. It is, therefore, the submission of Mr. Trivedi that if at all re-examination is to be ordered it ought to have been only in respect of remaining theory papers. Another submission of Mr. Trivedi is this that whereas on the face of para 3 of the letter written by the Principal of the College to respondent no.1, it clearly appears that the leakage or some abnormality was found only in respect of examinations which commenced from 13th March 2001, all the subjects ~~xxxxxx~~ ~~xxxx~~ ~~xxxx~~ except English papers 1 & 2, Physics Paper 2 and Accounts papers have been excluded in the re-examination schedule.

9) Regulations and Syllabuses of March 2001 has been placed before me. The power of re-examination in regulation 'J' is to the following effect:

"The Chief Executive and Secretary of the Council shall have the power to hold a re-examination or an additional examination, if he is satisfied that such a re-examination or additional examination is necessary".

10) Mr. Diwakar, learned counsel for Interveners draws my attention to Regulation 12 which is to the following effect:

"If the Awarding Committee is satisfied that the use of dishonest means in a paper or papers has been widespread at a centre, the Awarding Committee reserves the right to cancel the results of all candidates of that centre in the paper or papers concerned, or in the entire examination at the centre if several papers are involved".

He submits that in the event, this Court holds that re-examination is not warranted and that ~~xxxx~~ the results of the earlier examinations should be declared, the Authority can very well take recourse to this provision ^{and} in such event the loss of the students will indeed be irreparable.

11) Mr. Prashant Mishra, learned counsel, who represents respondents, has produced some documents. One document is a statement of fact submitted to the Deputy Secretary, Council for I.S.C.E on 16/3/2001 by one P.Nichols, the Supervising Examiner. The relevant portion of the statement is as follows:

" i) that on 12/3/2001, at the end of the ICS Ex.2001, while making arrangement of Ex. for the next morning, I noticed a horizontal cut along the strip near the bottom edge of the Q.pkt. of Bio-I. Immediately I showed the same to the Principal Mr.J.B.Singh Sir & Mr.S.S. Adhikari. They both insisted me to check other pkts. On a thorough check of the Pkts, we found that most of the Pkts had the similar cut line.

This detection was communicated to Mr. X.Pinto, who directed Mr.J.B. Singh Sir to convey the same to Mr.Fanthome.

ii) that having received the instruction by Mr. Fanthome, the next morning that is on 13th instt. I complied with the instruction passed on to me by Mr. J.B. Singh. The Q.Pkt was cut along the sides and duly packed, sealed & posted through the speed post the same day.

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iii) that next day on 15th March, Madam R. Wilson handed over a new Pkt of Accounts of ISC-12 to replace the one in my possession and took back the same. The exams-proceeded with the new set of Q.P. of Accounts.

iv) that on 16th I was called on earlier and Madam Wilson asked me to open the almirah and checked the Phy.2 Q.Pkt. She okayed it and instructed me to conduct the exam.

v) that after Phy.2 exams got over, she again asked me to show the Q.Pkt. of Phy.1 which is scheduled to take place on 19th instt. and further asked me to cut open the pkt. in the similar fashion that I had done for Bio-2. She replaced the packing with the new ones and handed over to me to keep in the safe custody".

11-a) Another document is a letter dated 16/3/2001 submitted to the Chief Executive and Secretary, Council for Indian School Certificate Examinations. In this letter certain events relating to the examinations and some suspicion that had arisen in regard to question papers have been described. The Principal also stated some of the steps he had taken and the information he had furnished to Mr. Xavier Pinto. In para 7 of the letter of the Principal, among other things it was further stated "no tampering was noticed in any of the papers pertaining to I.C.S.E. Examinations but to our surprise we noticed similar cuts in the most of the packets containing the I.S.C. Examinations".

12) Mr. Prashant Mishra, learned counsel for the respondents submits that so far as temparing with the question papers relating to XIIth Class Examinations, this should be taken to be a definite finding.

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13) Another document is dated 30/3/2001. This is a letter addressed to the Chief Executive and Secretary of the Council. Relevant portions are from paras 1 to 8 and the same have been extracted as follows:

1. On the basis of certain reports received by me alleging tampering and leakage of ISC (12) Question paper packets at the Rajkumar College, Raipur, I visited the College on 15-16 March;
2. I found that the allegations were correct and that the packets containing the question papers had been opened and resealed;
3. I presented a report on my investigations and findings to the Special Committee on Examinations of the Council;
4. The Special Committee on Examinations of the Council examined the entire matter including the letter from the Principal, Rajkumar College, dated 16 March (copy enclosed);
5. The Special Committee on Examinations decided to cancel the ISC (12) March 2001 Examination of the candidates of the Rajkumar College as detailed in my letter to the Principal, Rajkumar College (copy enclosed);
6. The fact that this case of leakage and tampering took place while the Question Papers were in the custody of the Rajkumar College is a matter of serious concern;
7. You may therefore want to enquire as to how this happened, so that the good name of the College is not tarnished;
8. The Council for the Indian School Certificate Examinations will intimate to you in due of course of time its decision regarding the continuation of examination centre at the Rajkumar College".

13-A On the same day, i.e., 30/3/2001, the said Deputy Secretary - Rita Wilson addressed a letter to the Principal regarding cancellation of ISC(12) March 2001 Examination at Centre No.B /8191 in the

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Rajkumar College, Raipur. Relevant portion of the said letter is as follows:

"A Special Committee on Examinations met and after due deliberation, concluded that-

- a) The ISC Examination at the Rajkumar College, Raipur, has been seriously compromised through tampering of the Question Paper Packets that show clear signs of being opened and being resealed except Physics Paper-2.
- b) The Rajkumar College ISC Examination stands cancelled except English Papers 1 & 2, Accounts and Physics Paper 2 for the following reasons:
 - * A fresh Accounts paper was given on the spot on 15 March.
 - * The packet containing Physics Paper 2 did not show any signs of tampering.
 - * On 5th March the Supervising Examiner informed the Principal that the arrangement of the Question Paper Packets in the cupboard had been disturbed. This was after English Papers 1 & 2 had been held.
- c) ISC (12) Re-Examination will be held for the candidates of the Rajkumar College from 19 to 27 April, 2001.
- d) The expenses incurred on holding this Re-Examination will be borne by the Rajkumar College"

14) Obviously, the power ^{and} ~~of the~~ competence of the Council to order fresh examinations in certain situation or circumstance, is not disputed at the Bar. In other words, exercise of power to conduct re-examination in certain circumstance is clearly envisaged under aforesaid regulation.

15) Though Mr. Shrivastava has argued vehemently that inquiry said to have been done is not sufficient and no proper inquiry as such has been made, on careful perusal of the two documents namely dated 30/3/2001 addressed to the Chief Executive & Secretary in which the circumstances have been clearly stated by the Deputy Secretary about the enquiry made by

the Competent Authority and secondly the other letter dated 30/3/2001 regarding cancellation of the examination, I am of the view that if re-examination is not allowed what would be at stake is credibility of the Competent Authority that can conduct the examination. In my view, this will far outweigh any other consideration including the inconveniences that are likely to be faced by the students in the event of re-examinations being conducted. In other words, it will not be fair and reasonable for this Court to interfere with the prima-facie finding and subsequent decision taken on the basis of such enquiry. I am also further of the view that in view of the very many important competitive examinations that have been scheduled as I have stated above, the students of this College are also preparing their lessons. I am also inclined to think that because of the order of re-examination the students are now preparing their lessons. It is not a case wherein certain students of this College have been singled out in the present exercise. If that be so, the entire exercise of the Competent Authority appears to me to be fair and just.

16) It is open to the Competent Authority to enquire into the question of leakage/tampering with the question papers and to punish the guilty according to law.

17) In the result, in the premises aforesaid this petition is dismissed. I pass no order as to costs. Interim order passed earlier shall stand vacated.

Sd/-
Chief Justice

25/4/2001